

TRANSLATION

MEMORANDUM
of the Federal Government
on the Saar Problem

STAT

1 Historical Development

The region along the middle Saar river is German by history, language, and customs. Nevertheless France has in the course of her policy with respect to the Rhineland during the last 300 years again and again laid claim to this rich country. The reasons given by her have been various. During the reign of Louis XIV they consisted of hereditary or feudal rights, during the nineteenth century, of demand for military security. In the twentieth century the French claims centered on the possession of Saar coal.

Today's French claim goes back to the Versailles Peace Conference. At Versailles, just as today, the original demand for annexation was modified as a result of the opposition of the British and U.S. Governments into an interim solution characterized by separating the Saar from German governmental authority and incorporating it into the French economic area. As in Versailles, the argument put forth today is that the French Government, because of having taken over the exploitation of the coal mines, must also exercise a controlling influence in the government of the territory, and for that reason, eliminate German governmental authority in the Saar region. President Wilson opposed the French design to annex this region, whether open or disguised. He did not wish to see a new Alsace-Lorraine arise between Germany and France. The tenacity with which Clemenceau and Tardieu held to their purpose led to the major crisis at Versailles. Wilson threatened to withdraw from further participation in the peace negotiations. His opposition was overcome by giving the population of the Saar the right, in recognition of the principle of self-determination of nations, to decide their destiny in a free and uninfluenced plebiscite under League of Nations' supervision after 15 years, that is, after French reparation claims to the Saar coal had been satisfied. Article 47 of the Versailles Treaty specified that this plebiscite was to be final.

STATE review(s) completed.

- 1 -

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In the plebiscite of 13 January 1935 a majority of 90.7 % voted for a return to Germany. This was not a victory of National Socialist propaganda. The Saar had been faced with the problem of voting ever since the day on which the Versailles Treaty went into effect, that is on 10 January 1919, and every citizen of the Saar territory had had ample opportunity during 15 years to prepare to cast his vote. If the plebiscite would have taken place prior to 1933, hardly anyone would have voted for continuing the administration by the League of Nations. This is proven beyond doubt by the fact that those men who in 1935 stood for continuing this administration, prior to 1933 advocated a return of the Saar region to Germany. This goes for Max Braun, leader in the struggle against the return, who in 1928, in a compilation entitled "The Saar Region" wrote the pathetic words: "The Saar, like Dürer's apocalyptic knight between Death and the Devil will ride home to the Reich." It applies however also to those men who today as Ministers in the Saar Government work for a separation from Germany, to Minister President Hoffmann in particular, who on the day of the plebiscite issued a proclamation which concluded with the summons: "With Jesus Christ for Germany - and against Hitler." Those who participated in the mass meeting of the "Status quo" Movement in Saarbrücken on 6 January 1935 even took a solemn oath that they would return to Germany as soon as Hitler was overthrown.

The change of heart in these men is as incomprehensible as is the attitude of the French Government which restored the Saar territory to Hitler and now wishes to take it from Germany under the hallmark of European cooperation.

French Claim to the Saar since 1945

In the last analysis, the French claim to the Saar is rooted in the Yalta Declaration. In his book "Germany, Bridge or Battleground" James Warburg, a former member of the U.S. War Information Service, writes as follows:

"The French asserted that the Poles and the Russians could not possibly be allowed to grab parts of Eastern Germany in violation of the principles laid down in the declaration of the United Nations, while at the same prohibiting the French from following such methods

in the West."

At the time of his visit to Washington in the summer of 1945 de Gaulle, then Chief of the French Government, demanded annexation of the Saar. The U.S. Government rejected this demand, whereupon the French Government dropped its claim for direct annexation. Instead at all conferences of the Allied Foreign Ministers France put forth the claim which the present agreements between the Saar and France are designed to fulfill. The salient features of this claim are the following:

The Saar territory shall be withdrawn from the jurisdiction of the Allied Control Council.

The Saar territory shall never again be subject to any German Central Government.

The Saar territory shall permanently be occupied by French troops.

The territory shall be incorporated into the French customs and currency area.

The French Government will provide for permanent supervision over the administration of this territory.

It shall be left to the Peace Treaty to give international sanction to this arrangement.

No agreement on this French claim ever came about between the signatory powers of the Potsdam Declaration. On 13 March 1948 Foreign Minister Bidault in the French National Assembly replied to the charge by a Communist deputy that France had committed in the Saar an "acte unilatéral":

"Fourteen times we have asked for an agreement on the Saar. It was only natural that the French Government would not humiliate itself so far as to make this request a fifteenth time."

It is true that U.S. Secretary of State Byrnes, in his Stuttgart speech on 6 September 1946 declared that the U.S. Government did not feel it could deny to France its claim to the Saar territory. By this concession he hoped to obtain the approval of the French Government to the merger between the three West-German Zones of Occupation. In his memoirs, however, he indicates that this offer had lost the premise on which it was made, since the French did not join in the merger with the U.S.-U.K. Zones. It is further

true that Secretary of State Marshall and Foreign Minister Bevin at the Moscow Conference of Foreign Ministers spoke in favor of the French claim to the Saar. However, the four occupying powers were unable to reach an agreement on this occasion. Nor has one ever heard that the promise given at the Moscow Conference was put into the form of an agreement binding on the British and U.S. Governments. If such an agreement should exist, the Federal Government would have every right to be informed about it.

The Federal Government knows of only two U.S.-British-French agreements with regard to the Saar, namely:

1. The U.S.-British-French Agreement dated 27 January 1948. As part of the European Coal Distribution Plan this agreement gives to the French Government the right to all the coal output of the Saar mines according to a sliding scale (but by no means to the Saar mines themselves).
2. The U.S.-British-French Agreement of 20 February 1948 on problems resulting from the incorporation of the Saar territory into the French economic system. The agreement merely stipulates that trade between the Saar territory and the Bizone shall, beginning on 1 April 1948, be handled according to the rules applying to foreign trade and that the accounting of such trade shall be made exclusively on the basis of the Dollar.

This shows that no legally binding agreement exists between the three Western Powers on a political separation of the Saar territory from the rest of Germany. If the U.S. and British Governments have in a Gentlemen's Agreement undertaken to support French claims to the Saar at a future peace conference, this does not preclude the right of the Federal Government to place on record in good time the points of view which it will have to defend during future peace negotiations.

II. The Position of the Saar Territory in Constitutional and International Law.

Since 1945, the Saar Territory forms part of the French Zone of occupation. As such, it was placed under the Allied Control Council and was never released from its jurisdiction. From the standpoint of international and constitutional law, the Saar Territory is a part of Germany. "Germany", according to the internationally binding Declaration regarding the Assumption of Supreme Authority with Respect to Germany of 6 June 1945 by the four occupying powers, is therein to be understood as the territory lying within the frontiers of Germany as they existed on 31 December 1937. At that time, the four occupying powers declared that the assumption of Supreme authority in Germany does not effect an "annexation of Germany". It is the view of the Federal Government that any territorial severance of an area which on 31 December 1937 formed part of the German national territory is equivalent to annexation, because such severed area is placed under the authority of a foreign power. The right of the Commander-in-Chief of the French Zone of Occupation to organize the area along the middle Saar river as a separate Land could not be contested. In the same way, the Laender Baden, Wurttemberg-Hohenzollern, North Rhine-Westphalia, etc., were formed. But this authority related only to the determination of internal German boundaries, and never to the severance of an area from Germany.

That the Saar Territory is, from the legal point of view, part of the French occupation zone was never questioned. The fact that the Allied Control Council, for the time being, suspended its activity is legally irrelevant as long as the Potsdam Agreement has not been formally abrogated. The U. S. State Department memorandum of October 1946 on the Saar question (Department of State Documents and State Papers, Vol 1, Nr. 7, p. 445) stresses this point by stating:

"Legally, the Saar Territory, having come under French control as a region within their zone of occupation, remains under the jurisdiction of the Allied Control Council for Germany for as long as that body chooses to maintain its right of authority (over the Saar territory)".

The French Government, too, acknowledges this legal position. As late as in its memorandum of 10 April 1947 to the Moscow Conference, France demanded that "the Saar be withdrawn from the jurisdiction of the Allied Control Council". Control Council legislation was made effective in the Saar territory, all the more important enactments by the French occupying power, even if exclusively concerning the Saar territory, were published in the Official Gazette of the French Commander-in-Chief, and the French High Commissioner for the Saar territory received his powers from two different sources:

1. from the French government
2. from the Commander-in-Chief of the French Zone of Occupation.

Despite this clear legal situation, the French government acted to separate the Saar territory from the rest of Germany by a host of specific measures. This started in December 1946 by closing the borders for traffic of goods and persons. Other measures followed, such as:

Prohibition of removal or transfer of capital assets, organization of an independent Saar railway system, embargo on newspapers from the occupied zones of Germany, introduction of French currency, establishment of governmental operation of the Saar mines, adoption of French foreign exchange legislation, absorption of German life insurance companies by French companies, and finally, on 1 April 1948, customs union between France and the Saar territory.

In comparison with the customs unions between Switzerland and Lichtenstein and between Belgium and Luxemburg, the relation between the Saar and France represents no genuine customs union since the smaller of the two partners lacks equality of rights. It is rather a subordination in custom matters, hardly distinguishable from an economic annexation, even after the concessions contained in the Saar agreements of 3 March 1950.

In making a judicious analysis of this customs union, the Federal Government may avail itself of all arguments which the French government presented before the Hague International Court of Justice in 1931 when opposing the projected Austro-German customs union and which were crowned by the contention that a customs union between a large and a small partner inevitably was the first step toward political annexation.

According to the assurances of the French government, this aim at annexation has now been definitely discarded. Yet the danger remains that, owing to the vastly important role which economic factors play in a miniature country divested of independent authority over its relations with other countries, conditions will develop in the course of time, which would be tantamount to a de-facto annexation, just as the French government felt it had to fear from an Austro-German customs union.

The creation of an autonomous Saar State changes the Western boundaries of Germany.

The Federal Government has gathered from repeated Allied declarations that any changes in the German boundaries as they existed on 31 December 1937, must be reserved for a peace treaty.

1. From the Declaration of the Allies regarding the Assumption of Supreme Authority with respect to Germany by the Allies of 5 June 1945:

"The Governments of the United Kingdom, the United States of America, and Union of Soviet Socialist Republics, and the Provisional Government of the French Republic will hereafter determine the boundaries of Germany or any part thereof and the status of Germany or of any area at present being part of Germany".

2. Potsdam Agreement

"The Conference examined a proposal by the Soviet Government that pending the final determination of territorial questions at the peace settlement,..."
etc. (Here follow provisions on the German Eastern frontier).

3. London Communiqué on Germany of 7 June 1948, Art. IV:

"The delegations have agreed to submit for the consideration of their governments proposals for dealing with certain minor provisional territorial adjustments in connection with the Western frontiers of Germany".

4. Six-Power Communiqué on Territorial Adjustments in the West of 28 March 1949.

The question of the German boundaries will be re-examined at the time of the final peace settlement and will be definitely regulated in its entirety.

If the Allies were agreed that the so-called minor border rectifications at the Belgian and Dutch borders are provisional, it is only logical to apply this principle to the considerably more significant border adjustment which is being effected by the political severance of the Saar from Germany.

This principle was emphatically stressed in the statement of the Council of Ministers of the European Assembly, of 3 November 1949 concerning the admission of the Saar territory to the Council of Europe which reads: ".... As it is deemed advisable that the Saar population be represented in the Council of Europe, until such time as a peace treaty will finally determine the organic form of the Saar territory....."

The French Foreign Minister, too, has repeatedly subscribed to this standpoint.

The Federal Government therefore is not alone in demanding that the French interests in the Saar territory should be examined and decided at a peace treaty or similar agreement. This calls for the participation by the Federal Government, and the French Government would have to refrain from all unilateral measures in the Saar territory which may prejudice a peace treaty.

III. The Economic Structure of the Saar

The economy of the Saar region rests on the coalmining industry which has a yearly output of

	million tons
1938 ¹⁾	14.4
1949 ²⁾	14.2
output target for 1952/53	17.0.

All other major industries are based on the coalmining industry. Today the Saar mines represent the most important economic factor of the Saar territory. In 1949 nearly 25 per cent of the working population in this area were employed by the coal mines. Considering the number of persons in each family, almost one-third of the Saar population may be regarded as directly dependent on the Saar mines for their livelihood. Everything that affects the Saar mines is therefore of far-reaching significance, in particular in the field of social policies.

The Saar mines are the most important customer of the Saar territory. The iron and steel producing and processing industries, the building industries etc. depend largely on the Saar mines. Tonnage involved and price policies pursued by the Saar mines have a decisive influence on all branches of industry which are major consumers of fuel. The solution of the capital investment problem will be a controlling factor for the future of the Saar mines. The difficult geological conditions in the Saar region continuously require higher investments than other coal districts with more favorably located deposits. Only considerable modernization of the mines will offset the higher costs resulting from the peculiarity of the Saar coal. This fact determines in the long run the ability of the Saar mines to compete. In 1945 this point had been reached by dint of 200 million RM expended by the Reich, and the Saar mines were fully competitive.

1) Official German figure

2) French figure (different conversion method)

	1913	1933	1938	1949
Saar Region	4.2	3.34	5.31	3.83
Other parts of Germany	4.7	0.95	3.66	3.08
France	2.7	3.98	1.56	2.96
Other countries	<u>1.1</u>	<u>0.82</u>	<u>2.15</u>	<u>0.84</u>
	12.7	9.09	12.68	11.43 ¹⁾

These figures show that in spite of the Allied Agreement on the complete elimination of the use of Saar coal in Germany, even in 1949 roughly one-third of the Saar coal was absorbed by the German market. In the long run Saar coal is dependent on this market because here it is fully competitive (freight advantages and technical installations of consumers).

The possibilities for marketing Saar coal in France and the other foreign countries are strongly impaired by the development of the Lorraine mines. It will be largely necessary to seek market outlets in the East for the increasing output of the Saar mines, all the more since the development of the Lorraine mining industry, which is beyond the control of Germany, rules out any sale of Saar coal to the West. It is significant that the agreement on the operation of the Saar mines does not contain any assurance by France as to markets for Saar coal or the rate of operations, although other very valuable reserve fields were recently sold to adjacent Lorraine mines on very favorable terms; these fields were then worked from the Lorraine side.

Of the total output of the Saar territory before the war (1935 to 1938) the following surplus was available for sale abroad (in per cent):

Hard coal	50%
Coke	8%
Pig iron and foundry products	90%
Thomas slag	95%
Benzene (benzol)	92%
Glass and glassware	80%

1) Translator's Note: Addition is wrong - must read 10.71 (!)

Benzene (benzol)	92%
Glass and glassware	80%
Earthenware	85%
Cement	50%
Power: Electric Current	5%
Gas	25%

The Saar was on the other hand short of:

Coking coal	by 10%
Iron ore	" 100%
Foundry coke	" 100%
Metal scrap	" 20%
Non-ferrous metals	" 100%
Pit props	" 85%
Glass sand	" 95%
Foodstuffs	" 50 to 95%

The total turnover of industry (excluding mining) and of wholesale trade in the Saar territory for the period from January 1948 to September 1949 is shown in the following tabulation by the Statistical Office of the Saar territory:

Period	Total Industrial Turnover	Saar Territory	France	Germany	Other Countries	Wholesale Trade Turnover
<u>1948</u>						
1st quarter	13 959	8 906	2 426	2 503	47	9 486
2nd quarter	17 831	10 901	3 861	3 046	73	9 863
3rd quarter	20 392	12 651	5 157	2 324	260	10 629
4th quarter	26 656	15 030	8 314	2 562	750	13 700
<u>1949</u>						
1st quarter	27 664	14 529	10 400	1 833	903	11 688
2nd quarter	27 674	14 426	10 971	1 300	973	11 433
3rd quarter	29 830	15 751	10 071	1 943	2 124	11 440

These figures show that the Saar economy is dependent on a settlement of its economic and commercial position which will secure the Saar's natural interlacing relations with West and East as far as its sources of supply and its market outlets are concerned. Experience since 1919 has proven that one-sided arrangements which bar access of the Saar economy to one or the other side are of short duration or can only be made to work by costly and special devices (Franco-German Saar Customs Agreement of 1927 and Franco-German Coke-Ore Agreement of 1937). That is exactly why the Federal Government is working towards a Franco-German solution of the Saar question to replace the unilateral settlement between France and the Saar which neglects the latter's economic interconnection with the German market.

IV. The Present Political Situation in the Saar Territory

In its political and administrative structure, the Saar territory on the surface differs little from other German Lander.

Political life developed along similar lines as in the other Lander of the French Zone of Occupation. Political parties have names similar to those in the three Western zones (Christian People's Party, Social Democratic Party, Democratic Party, Communist Party). Their programs differ hardly from those of the parallel parties in the Western zones.

The Saar territory has a Landtag elected under an electoral law which to all outward appearances contains nothing objectionable. The cabinet, consisting of members of the Landtag, is formed along democratic lines, and must possess under the constitution the Landtag's confidence.

The French Government exercises its control over the Saar Government in accordance with principles similar to those which existed in the Lander of the French zone prior to the issuance of the Occupation Statute. As in the three Western zones, the Military Government in the Saar territory was replaced by a French High Commission. The general trend in the Saar territory is also toward increasing the powers of the Government and a gradual reduction of the powers of the military control organs.

The Saar Government points to the democratic form of its organization, and maintains in particular that the elections of 5 October 1947 to the Landtag, which adopted the country's constitution and formed its government, were free and uninfluenced. The Government holds that the Saar population gave authority to the Landtag and the Government to take those measures which characterize the present status of the Saar region, namely

final political separation of the Saar territory from the rest of Germany,

inclusion of the Saar territory in the French economic area.

The French Government too has based its measures in the Saar region on the presumption of an existing incontestable expression of

political will in the Saar territory. Since the preamble of the constitution of the Saar territory expresses the wish to be included in the French economic area and at the same time to be separate from the rest of Germany, the French Government maintains that it is fulfilling a wish of the Saar population, and is in fact under obligation to do so.

The Federal Government must oppose this conception. The decision in the election of the Saar Landtag and the acceptance of the Saar constitution cannot be viewed as being democratic, free, and uninfluenced.

About April 1946, the French Governor of the Saar began to influence the licensed political parties in the Saar territory by intimating that dismantling of iron and steel works in the Saar territory could be avoided only if the political parties agreed to a union with France. At this time, unemployment and social distress were rampant in the Saar territory. Nobody could foresee how conditions would develop in other parts of Germany. In this situation, the party leaders listened to the arguments of the Governor, the more so as some of them had acquired French citizenship.

The propaganda for the political severance of the Saar region from the rest of Germany was carried out with the help of lavish funds by the "Mouvement pour le Rattachement de la Sarre à la France" (MRS) which had been founded with French support. The party officials of the MRS took over all leading positions in the political organizations of the Saar territory. The question of the political future of the Saar was forcibly removed from all public debate and instead, the advantages of a closer economic tie between the Saar and France were publicized in all detail. Leading personalities of all parties were given positions which made them completely dependent on the grace of Military Government.

None of the political parties was able to decide by a secret vote on the question of the economic union and the separation from Germany.

The fateful decision which was forced on the Saar population would have required a direct plebiscite, such as were held in 1919 in

almost all cases of cessions of territory in application of the principle of the right of self-determination of peoples. According to Art. 27, par. 2 of the French constitution, every acquisition of territory must be made the subject of a popular referendum by the population concerned.

It is particularly striking that the French Government has avoided a popular referendum in the Saar region, whereas in the villages of Tende and Briga in Upper Savoy, which were ceded in the peace treaty with Italy, it was carried out without hesitation.

The political parties in the Saar territory were aware of their responsibility to hold a popular referendum. This view was also expressed by the deans of the Catholic Church, as well as by the District Executive Committee of the Social Democratic Party which on 7 July 1947 by a vote of 18 to 3 demanded a plebiscite and wanted to make its participation in the work of the commission for the drafting of the constitution conditional upon the Military Governor's consent to such a plebiscite.

The Governor blocked a popular referendum. As early as 9 June 1947 he told the members of the Executive Committee of the Social Democratic Party:

"I shall never permit a popular referendum on the constitution. The larger majority of the Saar population is catholic and is subject to the influence of the Bishop of Trier who is an opponent of a union of the Saar with France. It would be an easy matter for him with the help of the catholic clergy to prevent the adoption of the constitution if the referendum were conducted by secret ballot. I shall not give him such an opportunity."

This statement has been expressly attested to by the Secretary-General of the Social Democratic Party in the Saar territory who has since been expelled from the Saar. The Governor preferred to have a Landtag, whose composition he could influence directly, approve the constitution, and with it the separation from Germany. This holds true already for the setting up of the constitutional commission.

The members of this commission were to be nominated by the parties. Military Government, however, made ample use of its right of disapproval. One-half of the members of the constitutional commission belonged to the MRS. A number of these even were French citizens. The deliberations were not public. The population was not informed about the constitutional questions. The Action Committee of the MRS played an active part in the nomination of candidates by submitting the candidates of its choice to the Governor for approval.

A week before the election, the "Volksstimme" of Saarbrücken was forbidden by censorship to publish the draft of the constitution. The other papers did not even make an attempt to publish the text of the constitution. Only the Communist paper "Neue Zeit" succeeded in printing the text of the preamble just before the election. The decisive question regarding the separation of the Saar from Germany was not touched upon in election meetings. According to a recently published statement of the Military Governor, who after the adoption of the constitution was appointed High Commissioner, 45,000 copies of the text of the constitution were printed. The text was made available to the individual burgomasters immediately before the election, in some cases only one day before the election, for distribution to interested persons, so that not even every tenth voter could be in possession of the text. Numerous expulsions from the Saar region took place shortly before the election. The persons affected were mainly those of whom it could be assumed that they would oppose a separation of the Saar from Germany. This wave of expulsions spread terror in the Saar territory. Nobody could foresee to what lengths it would go. It had a direct bearing on the way the whole population voted.

According to their ideological orientation, the political parties went to the people with the same programs as the corresponding parties did in election campaigns in the Western zones. The question of the confessional school was in the foreground in the Saar territory with its predominantly catholic population. In an open letter addressed

to Minister-President Hoffmann in January 1950, the catholic clergy of Saarbrücken strongly protests against the abuse which in the name of politics is carried on with the voters' attitude as determined by ideological issues. Of decisive significance is the fact that no party had been licensed which would have come out against a political separation from Germany, with the exception of the Communists. For the overwhelming majority of the Saar population it was however completely out of the question to vote Communist.

Opposition to the adoption of the constitution made itself felt in the ranks of the Christian People's Party as well as of the Social Democratic Party (SPS). Those SPS deputies who were opposed to the severance of the Saar from Germany were summoned before the Military Governor one day prior to the vote on the preamble to the constitution. The Military Governor threatened that all promises which he had made with regard to improved food rations for the Saar territory, the waiving of dismantling, and the transfer of the Saar mines to the ownership of the Saar people, and even with regard to a favorable exchange rate in the conversion of the currency, would be withdrawn if they voted against the preamble. Under these circumstances even Deputy Kossmann, honorary chairman of the Christian People's Party, found himself unable to read his prepared statement against the preamble when the vote took place.

These facts show clearly that the Saar Landtag, the constitution adopted by it on 15 December 1947, and the Saar Government formed by it came into existence under circumstances which must of necessity arouse the gravest misgivings.

A closer consideration of the situation in the Saar territory compels us to note that even under the constitution which the Saar had given itself, the Saar population encounters the greatest obstacles in freely expressing its political will. In this connection we shall not dwell on the restrictions imposed on the Saar by the fact of its economic union with France and the resulting veto power of the representative of the French Republic with respect to Saar legislation and administrative regulations. It must however be pointed out that besides the enforcement agencies of the Saar police, the French security police under the French director of control services exercises an extensive supervision which goes as far as tapping telephone conversations, censorship of the mails, and expulsions.

The equality of the citizens before the law has not been secured since the inhabitants of the Saar territory are divided into two categories: the holders of the red and of the grey identity papers. The red document is given to all such persons who had their residence in the Saar territory prior to 10 January 1933 and have lived there for a period of at least ten years or were born in the territory. Other persons receive only the grey pass. Holders of grey passes - their number is estimated at about 7.5 % of the population - may neither vote nor be elected. They are barred from civil service. They are restricted in their movements and may be subject to expulsion.

Thus there are some ten thousand of citizens of German nationality in the Saar territory whom the Saar Government does not recognize as citizens of the territory. These persons cannot be denied the right to appeal to the Federal Government in order to protect their interests, especially in the case of expulsion.

The right of free speech has been severely curtailed:

Freedom of the press exists only as long as newspapers refrain from printing statements opposing the Saar Government. Any published opposition

entails seizure of an entire issue and suppression of the paper. The responsible editors suffer expulsion, as f.i. Ernst Roth, editor-in-chief of the Social-Democratic "Volksstimme", in September 1948, Dr. Drexler, editor-in-chief of the Democratic "Saarland", in the spring of 1949, Georg Schneider, of the "Volksstimme", in the fall of 1947, and Alfred Daun in January 1950. Dr. Schäfer, editor-in-chief of the Christian-Democratic "Saarländische Volkszeitung", was removed from his position, because he advocated greater independence of the economic administration.

The broadcasting system of the Saar territory is in French hands.

Right of Assembly and Association

Notice of all meetings must be given to the police, and are supervised by police officers. Even meetings of occupational organizations come under this regulation. Associations may only be founded with the previous approval of the High Commissioner. The draft of a law on associations, which is before the Landtag at present, provides that in future the Minister of the Interior will be empowered to prohibit or dissolve any association. Political parties may not be founded unless the Landtag gives its approval by a two-thirds majority. The draft laws which were submitted to the Landtag and passed in first reading on 18 January indicate to what extremes the Saar Government is ready to go. Under these laws the formation of new political parties or trade unions would even require the unanimous approval of the entire cabinet.

According to another bill for the protection of the democratic order of government, the Government may by administrative decree proceed against all persons who repudiate the Saar state or heap contempt upon it. Further debate on these bills, which bear resemblance to the methods of the East, was suspended on orders of the French Government; the bills however have not yet been withdrawn.

Expulsions

The most severe means of pressure at the disposal of the Saar Government is expulsion. We have already pointed out that during the campaign preceding the election of the Landtag, French Military Government made ample use of

this measure. When resorting to this measure, the Hoffmann government invoke Art. 5 of the Law concerning Residence in the Saar Territory, dated 29 July 1948, under which any foreigner may be prohibited from sojourning within the territory if public interest so demands. Foreigners within the meaning of the Saar law on citizenship are all inhabitants of the country to whom "red passes" have been denied. Expulsions continue to take place. Among the best-known victims are Father Hollenbach, who was expelled because he published a pastoral letter of the Bishop of Trier in his parish newspaper, clergyman Bungarten, because he collected signatures for a petition to the Holy See which asked that the Saar territory not be separated from the dioceses of Trier and Speyer, to which it had belonged for centuries. There exists no possibility for having expulsion orders reviewed by courts sitting in constitutional or administrative matters. In the same status as the expelled persons are those natives of the Saar region who live in the Federal territory because they had been evacuated from their homes during the war, and who until this date have not received permission to return. There are no official figures on the number of persons who have been deprived of their homeland because they were expelled or because their return thereto has been refused. Their number has been reduced by only an insignificant percentage as a result of the partial amnesty in December 1949 which did not affect more than 120 families altogether.

The Saar Government is determined to continue holding the population in check by threats of expulsion. Minister-President Hoffmann, for instance, at the fourth Land-wide meeting of the Christian People's Party (9 to 11 Dec 1949) said:

"One thing is sure, - and this is all we demand - that the organ of government chosen by the Saar people in a free and unhampered election, that is to say, the Saar parliament, has established a code to which every citizen must subscribe if he attaches importance to being here and to staying here."

All this reveals that the democratic way of forming a political will in the Saar region is subject to very severe restrictions, that any sign of political opposition is suppressed, that the formation of new political parties is almost impossible, and that neither in the press, nor on the radio, nor at meetings or in associations can opinions be freely expressed if they contain any criticism of the imposed system.

V. THE AGREEMENTS BETWEEN FRANCE AND THE SAAR TERRITORY
OF 3 MARCH, 1950

The political order of the Saar is laid down in the so-called "General Agreement between France and the Saar Territory." Under Article I of this Agreement, the Saar Territory is autonomous. The dependence of the territory on France is set forth in Article 3. Various other parts of the agreement however, expressly mention the political "independence" of the territory. Moreover, Articles 6 and 11 stipulate that the members of the French representation in the Saar shall enjoy diplomatic privileges and immunities, as do the members of the Saar representation in Paris.

In brief, the contracting parties regard the Saar territory as an independent country which in certain, though decisive respects, is subject to French authority.

Pursuant to Article 13, this agreement shall come into force immediately upon its promulgation in both countries.

Nowhere in the whole of this General Agreement on which hinges any analysis of the Saar problem, is there any mention of a peace Treaty with Germany. The future peace treaty is mentioned only in two of the agreements - once in the preamble to the agreement on the railways, and again in the agreement on the mines, to which latter more detailed reference will have to be made later on. The agreement on the mines has been concluded subject to the Saar's claim to ownership of the mines being upheld by the peace treaty. The political order of the Saar territory and the legality of its Government are thereby tacitly presumed to be final and independent of the peace treaty. The preamble to the agreement on the railways contains the words "notwithstanding the provisions of the peace treaty with Germany." The omission of the same words in the other agreement, particularly in the general political agreement is therefore obviously intentional.

From this it is evident that the contracting parties had in mind to provide a final settlement. The intention is quite clear that the contracting parties look upon the political order of the

Saar as final and not depending on the peace treaty with Germany.

The assertion of the French Government that, in framing the status of the Saar, allowance was made for a possible different settlement by the peace treaty, is therefore not borne out by facts. Foreign Minister Schuman and Minister President Hoffman who signed the agreement, did not have in mind a temporary arrangement for the Saar territory, that is, one that would apply until a peace treaty with Germany had been concluded. On 1 December, 1949, Foreign Minister Schuman wrote to Minister President Hoffman that the purpose of the agreements was "the establishment of French-Saar relations on a lasting basis," and when the accord was signed on 4 March, 1950, Minister President Hoffman declared that "the Saar Government does not regard the situation established by this accord as temporary, but as final. The future peace treaty must, of course, confirm the settlement as contained in these agreements."

The French-Saar agreements bar any public discussion in the Saar territory on the constitutional relation of the Saar to the Federal Republic. By this accord the Saar Government undertakes vis-a-vis France to preserve its separate existence and independence of Germany. France's representative in the Saar has the right to veto any Saar legislation which interferes with the economic union with France, with international obligations (i.e. obligations entered into with France) and with the Saar's independence.

These clauses leave widest scope to the discretion of the French representative.

The licensing of political parties in the Saar territory is made conditional on a legislative enactment by the Landtag which requires a two-thirds majority. Under the Saar agreement, the formation of a party which does not advocate economic union with France and separation from Germany, is therefore impossible.

The French representative is empowered to appoint French officials in the Saar territory and may declare a state of emergency if the independence of the territory is threatened. The Saar territory's freedom to make decisions of a political nature in the most important fields is obstructed by the fact France has reserved to itself the

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function of representing the Saar's interests in foreign countries, which means also in respect to the Federal Republic.

Moreover, the Saar Government shall have no independent jurisdiction in the following fields: Defense - general economic policy - currency - foreign exchange control - customs legislation - collection and administration of customs duties - indirect taxes - Government monopolies. Its power remains restricted in all fields which are the subject of agreements with the French Government.

These are: the exploitations of the mines - the operation of the railways - the administration of justice as far as French nationals residing in the Saar territory are concerned - industrial property rights - those cultural affairs, in respect of which the Saar Government has taken on certain obligations under the French/Saar Cultural Agreement - and others.

In questions of wage, price, and social policies, the abolished general veto power of the former High Commissioner has been replaced by a general clause of the agreement on the application of the Economic Union (Art. 3 c). This clause binds the Saar Government "to take all legislative measures necessary to place the economy of the Saar in a position corresponding to that of the French economy." Legislative measures which contravene this clause constitute a violation of international obligations of the Saar Government and thus substantiate renewed use of the veto by the French representative.

By the terms of the agreements the Saar therefore remains to the greatest extent politically and economically under the control of France.

Although with the coming into force of the agreements, the French representative in the Saar territory no longer has the extensive power over internal administration as did the former High Commissioner and, in particular, his power to use ordinances and regulations is restricted to the application of French currency and customs legislation in the Saar territory, his power to veto Saar legislation and regulations nevertheless, gives him an extraordinary prerogative. By his veto he will be able to guarantee the fulfilment of obligations which the Saar Government has entered into with respect to France. In particular however, he guarantees the independence of the Saar.

.../...

In conclusion it can therefore be said that the Saar has been made completely independent of Germany, whereas in all important fields it continues to be subordinated to France to such a degree that one can rightly speak of a disguised annexation.

The Agreement on the Saar/Mines

Whereas all other agreements expressly state that they will become effective immediately upon publication in both countries, this clause is missing in the agreement on the Saar mines.

The preamble of this agreement states:

"Whereas the Saar is entitled to the ownership of the coal mines situated on its territory, and the French Republic undertakes to support the just claims of the Saar to this ownership at the time of the peace settlement with Germany." The peace treaty with Germany is referred to here, and there can be no doubt that neither the French Republic nor the Saar territory are of the opinion that these coal mines already today belong to the Saar.

The same is shown in Article 1 which states: "subject to the provisions of the peace settlement, particularly as regards the right of ownership of Saar mines..."

It is however, the German Federal Republic which has the right of ownership of the Saar mines. The Saar mines which pursuant to the Treaty of Versailles had become French state property, were transferred to German Reich ownership on 1 March, 1935, by virtue of a France-German agreement against payment of a purchase price of approximately 900 million francs and were subsequently organised as a stock company, the shares of which were held exclusively by the German Reich. By virtue of Military Government Law No. 52 all property of the Reich was seized and placed under custodianship. Even the transfer of the Saar mines to French administration on 3 January, 1946, did not change this legal status. The French and the Saar Governments when concluding the agreements on the Saar mines took this legal position into account in that the French Government merely undertakes to press for a transfer of the ownership of the mines to the Saar Government at the future peace negotiations. This therefore shows that the French Government does not maintain its former claims to ownership. If, however, the Saar mines

are not French property either and are only to be transferred to the Saar Government at a later date, it follows that in the opinion of the contracting parties they still remain German property.

This 50-years' lease at a totally inadequate rental stipulated in the agreement in the face of this legal position constitutes so incisive an encroachment on German ownership rights that such a lease cannot be upheld from the standpoint of a trusteeship over German property.

When reviewing the agreement between the Saar and France, it must also be taken into consideration that the essential claims of the Saar Government were not granted during the negotiations. The most important of these rejected points were:

Restriction of the veto power of the French representative in matters affecting the currency and customs union, establishment of an arbitration board for settling disputes arising out of the economic union (the Economic Commission provided for in Art.5 and 6 of the Agreement for the Application of the Economic Union has a majority of French members and therefore does not constitute a true court of arbitration), having the Saar Government represented in all French agencies dealing with economic questions concerning the Saar territory, participation of Saar officials in the administration of customs, facilitating travel to and from the Saar territory, an independent credit policy for the Saar.

The transformation of the French High Commission into a French Government Representative with diplomatic immunities is scarcely more than a gesture.

There is no establishment of any genuine diplomatic relations between the Saar and France. The power to issue ordinances and regulations and to exercise a veto gives the representative of the French Government a status which is not held by any diplomatic representative of one state in another.

The agreement does not confer functional responsibilities on the Saar Territory's representatives in Paris.

The controlling powers of enforcement at the command of the French Government in the Saar territory remain. The maintenance of

French occupation forces and French police in the Saar has not been limited as to time in the agreements.

All this shows that the Saar agreements of 3 March, 1950, mean a further, and, in the wish of the contracting parties, a permanent consolidation of the ties joining the Saar territory to the French Republic. These agreements create no real autonomy, and they prejudice the peace treaty.

VI. THE POLITICAL EFFECT OF THE SAAR
AGREEMENTS AND PROPOSALS FOR A
SOLUTION OF THE SAAR QUESTION

Under the Four-Power Declaration of 5th June, 1945, and the Potsdam Agreement of the 2nd August, 1945, the re-organisation of Germany was based on the frontiers of 1937. Whereas Part IX of the Potsdam Agreement established a provisional administration of German territory east of the Oder and Neisse rivers, the agreements between the Allies with regard to the West contained no provisions introducing any alterations. The Saar Territory, originally occupied by American troops, was incorporated in the French Zone of Occupation, and has, since that time, remained de jure part of that Zone. The German public was not informed that any change in this legal position had taken place. As a matter of principle, all changes of sovereignty were to take place only in the Peace Treaty. By introducing the customs frontier in December, 1946, the French Occupation Power began to depart from these agreements with the great Powers, and now endeavours by means of the newly concluded agreements to create in the Saar basin a state separated from Germany proper.

If the French public puts forward the argument that this development, which took place by degrees over the last three years, has had the tacit approval of the German public this argument does not correspond to facts. The customs and currency frontier of December, 1946, was set up at a time when the Marshall Plan and the fusion of European countries towards a unified customs territory were of particular current interest. During the ensuing months, decisive negotiations on the question of a European Customs Union took place (14th March, 1947, Benelux Protocol; 12th September 1947, recommendation of study committee for the Marshall Plan on setting up a European Customs' Union; 13th September 1947, negotiations between Italy and France on a customs union; 19th December 1947, negotiations for a customs union between Greece and Turkey). The German public believed that the customs and currency union of the Saar territory with France would represent the first step

towards a general European Customs' Union and for this reason only did it show the greatest restraint in passing judgment on this arrangement.

Also, it is not true that in its deliberations the Parliamentary Council evaded this problem. When it was publicly suggested that the Saar territory should be invited to Herrenchiemsee, this suggestion met with a brusque refusal on the part of Minister President Hoffman. Nevertheless, the Basic Law of the Federal Republic contains two explicit references which open the way for the Saar Territory to become a member of the Federation at any time. Article 23 states that for the present, the Basic Law only applies to the 11 Laender of the Federation but goes on to say that "it shall come into effect in other parts of Germany upon their joining". The Preamble of the Basic Law concludes by explicitly calling upon the whole German people to consummate the freedom and unity of Germany by the free exercise of the right of self-determination. The Basic Law was approved by the Allied Powers who thereby recognised in principle the right of the German people to freely determine its constitutional organization within the spirit of the Charter of the United Nations. German public opinion has repeatedly proclaimed this point of view through the words of eminent spokesmen at all stages of the Saar problem. For instance, in his capacity as Chairman of the CDU, the Federal Chancellor emphasised on 7 January, 1947 and 5 October, 1947, that the Saar question could only be settled on the basis of international law. In this statement he also said that "this rules out any annexation. For the rest, the right of self-determination of the Saar population is the decisive factor. This also applies to the so-called economic separation. The right of self-determination can only be expressed in a plebiscite conducted freely and by secret ballot. If economic integration means, as is to be feared, that the Saar is to be completely removed from the German economy, this would constitute a one-sided and forcible solution. At any rate, the Saar population would have to be consulted on this question."

When the French Government addressed to all members of the European Pact the request to admit the Saar as an associate member, Herr Heuss, later President of the Federation, and Dr. Schumacher, leader of the opposition, emphatically issued public warnings against creating a new situation in the Saar region. The French public has thus been informed of the attitude of responsible German political leaders at all decisive stages of the Saar problem. Particularly in view of the untenable conditions created by the provisional arrangement for the administration of the East, which on repeated occasions had been described by the U.S. and British Governments as not representing a final solution, the German public could not bring itself to believe that four years after the Armistice an attempt would be made to carve off a purely German territory without consulting its population, or without giving a hearing to the responsible German Government. The Federal Government must raise its voice in protest against this procedure. How can it otherwise oppose the Polish or Russian demands which make similar claims to the territory along the Oder-Neisse Line? How can it adopt a policy guided by the new European order along the lines of the United Nations Charter, if the signatories to this Charter realise their economic interests at the expense of the German population by selfishly ignoring the right of self-determination of the German people. The Federal Republic is responsible also for Berlin and for the Eastern Zone according to the opinion of the three Western Allies, as stated on repeated occasions. The Government must do everything to prevent Berlin from falling to the enemy. It must endeavour to counteract Soviet influence in the Eastern Zone. How can the Government at the same time adopt a completely different attitude with regard to the West? How can it keep alive the confidence of the German people in the declarations of the Western Allies if in Paris a situation is created which squarely

contradicts the declarations made in the past by the United States, British and French Governments?

The factual situation which has now been created in the Saar territory unfortunately offers - in view of the world-wide differences between East and West - a strong encouragement to all those nationalistic aims which the Federal Government regards as a great misfortune for Germany and for Europe. These elements run counter to European integration, and are apt to perpetuate friction, instead of opening the door to co-operation. What other explanation can be given if the Saar region is hermetically sealed off against the Federal territory?

The Allies have solemnly promised not to annex Germany, but where is the dividing line between political separation and annexation?

On the first occasion when the Federal Government had to deal with the Saar question it expressed its intentions clearly and unequivocally. In his governmental declaration the Federal Chancellor acknowledged the existence of French economic interests in the Saar which must be harmonised with the political and economic interests of the Federal Republic and the equally justified interests of the Saar population. On that and on numerous other occasions, the Federal Government had announced over and over again its readiness to settle questions relating to the Saar in a spirit of mutual understanding. It wished to avoid above all that the relations between Germany and France should be handicapped to the detriment of European co-operation. For the purpose of achieving this objective a frank discussion on the Saar question would have been necessary between France and Germany. Agreement in the spirit of a mutual desire for compromise should, even today, be the first and indispensable step towards a growing Franco-German and European economic co-operation.

The Federal Government cannot but deeply regret and deplore that the French Government had claimed the sole right to settle the Saar question on its own terms with the assent of the Saar Government set up by France.

The Federal Government is convinced that within the frame-work of European co-operation it should not be difficult to find a possible solution to the economic problems relating to the Saar which the French Government has put forward in support of its claims to the Saar. The core of such a settlement might well be "an International Saar Authority" which would further develop in a positive sense the fundamental idea underlying the International Ruhr Authority. The economic ramifications of the Saar, Lorraine and South Germany could be taken into account by setting up a special customs regime similar to the interim regime which was created in the Saar territory under the Versailles Treaty during the period from 1920 to 1925. In order to establish such a regime it might be necessary that the Saar territory should, as part of the French Zone of Occupation, be given a certain economic autonomy. In view of the fact that on the basis of international law the Saar territory belongs to Germany this should be done through legislation enacted by the Federal Government. Possibly such a status would meet the economic aims which France is to-day pursuing on its own in the Saar territory, but at the same time it would not be necessary to separate the Saar politically from Germany proper. The Federal Government must, therefore, insist as a matter of principle that any separate regime to be set up in the Saar territory, and particularly any political separation of that territory from Germany, should be made the subject of a genuine plebiscite to be held under the same conditions as the Plebiscite in 1935. The US Government, through its High Commissioner McCloy, has called for free elections for the whole of Germany. This justifiable demand must not exclude the Saar region. The Saar question is a question to be decided by the population

of the Saar territory and of Europe. The answer must be given by the Saar population in expressing its will freely and in a European spirit.

T R A N S L A T I O N

Constitution of the Saar Territory

of 15 December 1947

The Legislative Assembly of the Saar Territory in its sessions of 8 November and 15 December 1947 has adopted the following constitution which is herewith promulgated:

P R E A M B L E

The People of the Saar Region

summoned to reshape its life as a community with regard to its cultural, political, economic, and social elements after the collapse of the Reich,

imbued with the realization that its existence and its development may be secured by the integration of the Saar territory in the economic area of the French Republic,

placing its reliance on an International Statute which will determine the basis for its independent life and its reconstruction,

founds its future on the economic fusion of the Saar territory with the French Republic and on their currency and customs union, which comprise:

political independence of the Saar territory from the Reich, defense of the Saar territory and representation of its interests in foreign countries by the French Republic,

application of French customs and currency legislation in the Saar territory,

appointment of a representative of the French Government with power to issue ordinances and regulations to ensure the preservation of a united customs and currency area and with supervisory authority in order to

guarantee observance of the Statute,
establishment of a judiciary which will guarantee uniform application
of the law, as provided for in the Statute.

The Landtag of the Saar Territory, chosen by the people in a free election
in order to give binding effect to this wish and to establish, after
the downfall of a system which degraded and enslaved the individual,
a new State on the fundamentals of freedom, humanity, justice, and morality,
with the mission to form a link in the understanding among peoples and
to serve the ends of peace in reverence for God

therefore has adopted the following constitution:

(the text of the Constitution follows)